

TERMS AND CONDITIONS OF SALE

1. These Terms and Conditions of Sale set forth the terms and conditions upon which Seller will sell certain products to the Buyer. These Terms and Conditions and the document to which these Terms and Conditions are attached or incorporated (collectively, this "Agreement") constitute the final, complete and exclusive agreement between Buyer and Seller as to the sale of the products, and supersedes all prior oral or written agreements (whether express or implied, including implied by custom, practice, course of dealing, or otherwise) with respect to the same. Any attempted modification of this Agreement by Buyer, and any additional or different terms included in Buyer's purchase order, in any other document responding to any offer by Seller, or in subsequent documents, purchase orders or acknowledgment requests provided by Buyer relating to any offer by Seller are hereby rejected unless conspicuously and expressly assented to in writing by Seller. Finally, Buyer acknowledges and agrees that it has not been induced to enter into this Agreement by any oral or written representation, guaranty or warranty made by Seller, its employees, agents or representatives other than as expressly set out in this Agreement.
2. All orders are subject to Seller's acceptance in writing. Orders accepted by Seller are subject to availability and at Seller's prices in effect at the date of shipment of the order. The order will be processed with every effort to meet the requested shipping date, but the Seller is not obligated to make delivery by any specified date nor liable for damage due to delay in filling the order. Specified shipping dates are Seller's best estimates and are not guarantees.
3. Unless otherwise indicated, all products shall be shipped Ex Works (EXW) Seller's facility. Title and risk of loss in all products sold hereunder shall pass to Buyer upon Seller's making the products available to carrier at shipping point, unless otherwise expressly and specifically provided for in writing by Seller. Unless Seller accepts in writing specific instructions given by Buyer relating to shipment, arrangements shall be at Seller's option. In all events Buyer shall reimburse Seller for extra freight charges and incidental costs incurred for products shipped at Buyer's request by means other than Seller's customary shipping methods. Where deliveries are to be made in one or more installments, whether of specified amount or not, each installment shall constitute a separate agreement and shall be paid for in accordance with the terms hereof, regardless of the claims of Buyer upon this Agreement or any other agreement or relating to products subject to this Agreement or any other products, and the failure to deliver any part of the installment shall not relieve Buyer from the obligation to accept and pay for other deliveries and installments under this Agreement.
4. Buyer may cancel an order only with Seller's written consent. In the event of an approved cancellation, and where Seller has incurred costs and expenses that cannot reasonably be recovered through the sale of the products to another entity, Buyer will pay Seller for all such costs and expenses, which may include costs of related raw materials, packaging and other items dedicated to the products. Seller may cancel an order without obligation or liability upon notice to Buyer.
5. Notwithstanding anything contained herein to the contrary, Buyer and Seller agree that Seller shall have the absolute right to change the price, freight allowance, or terms of payment regarding any unshipped products hereunder. Buyer's failure to make written objection to such increase or change prior to the effective date shall be considered acceptance thereof. If Buyer so objects, Seller may elect to continue to supply Buyer at the price, freight allowance or terms of payment existing at the time of the announced change or, if unwilling to do so, then Buyer or Seller may cancel such order upon thirty (30) days written notice. If the price, freight allowance or terms of payment hereunder are nullified or reduced or if a proposed change is prohibited by any law, government decree, order of regulation, Seller may cancel this Order upon thirty (30) days written notice.

All applicable sales or use taxes, excises, or any other taxes or charges (except net income and equity franchise taxes) imposed now or in the future by any federal, state, foreign or local authority upon productions, sale or transportation of the Products shall be for the account of Buyer. Buyer shall reimburse Seller for any such taxes, excises or charges which Seller may be required to pay in addition to the price payable by Buyer for the Products. Buyer may, at its option and where legally permissible, elect to file a proper exemption certificate with Seller and Buyer shall be fully responsible for paying taxes direct to the taxing authority.

Notwithstanding anything to the contrary herein, any tax, duty, tariff or other governmental charge, or increase thereof, (collectively, a "Charge") upon the production, sale, transportation, delivery, use and/or shipment of the

products sold under this Agreement (other than taxes based on Seller's net income) or entering into the costs of the products (including raw materials used to manufacture the products), whether by federal, state, or municipal authorities, imposed, or becoming effective, on or after the date the order was accepted by Seller, shall be added to the price then in effect under this Agreement and shall be paid to Seller by Buyer.

6. All invoices shall be paid within 30 days of receipt of invoice. Terms on established credit accounts are net on presentation. Seller may defer shipments, alter payment terms, or terminate this Agreement if Buyer breaches any of the terms of this Agreement or fails to pay any invoice when due. Seller may require cash payments, satisfactory security for future deliveries or other adequate assurances of performance if Buyer fails to pay any invoice when due or if Buyer's financial condition becomes impaired in the opinion of Seller. Buyer agrees to purchase, accept delivery of and pay for all products ordered and for which Seller has issued a confirmation. Buyer is not entitled to suspend or withhold payment of any sums (or parts thereof) due to Seller by reason of set off, counter claim or any other reason whatsoever. All amounts owing to Seller shall be paid in full on or before the applicable due date. Any amounts not paid in accordance with invoiced terms shall bear interest at a rate of two percent (2%) per month or the maximum percentage rate permitted by law, whichever is lower. Buyer shall reimburse Seller for all of Seller's costs and expenses, including reasonable attorneys' fees, incurred in connection with collecting overdue accounts.
7. Neither Seller nor Buyer will be liable for default or delay, in whole or in part, in the performance of any of its obligations hereunder due to any cause beyond its control, including, but not limited to, Acts of God; accident; fire; flood; storm; epidemic or pandemic; riot; war; sabotage; explosion; strike; labor disturbances; national defense requirement; Governmental law, regulation, rule or ordinance, whether valid or invalid; inability to obtain energy, raw materials, labor or transportation under reasonable terms and conditions; or any similar or different contingency which makes performance commercially impracticable. Quantities so affected may be eliminated from this Agreement without liability, but the Agreement shall otherwise remain unaffected. Seller may, during any period of shortage due to any of the foregoing causes, allocate its supply of such products in any manner which Seller, in its sole discretion, deems appropriate, among itself and its customers, including those customers not then under contract.
8. Seller warrants transparencies products, unless otherwise agreed to in writing, to the original buyer against defects in materials and workmanship for a period of one (1) year from the date of delivery to original buyer. For all other products, Seller warrants that the products supplied hereunder meet Seller's standard specification for such product, or such other specifications as have been specifically agreed to in writing, for the applicable shelf life of the specific product. OTHER THAN THE WARRANTY IN THE PRECEDING SENTENCE AND THE WARRANTY OF TITLE, AS PROVIDED IN THE UNIFORM COMMERCIAL CODE, SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND NONE SHALL BE CREATED, WHETHER UNDER THE UNIFORM COMMERCIAL CODE, CUSTOM, PRACTICE OR OTHERWISE. THE SELLER MAKES NO WARRANTY AS TO MERCHANTABILITY OR AS TO FITNESS FOR A PARTICULAR PURPOSE OF THE PRODUCTS SOLD HEREUNDER.

All recommendations, statements and technical data regarding Seller's products are based on tests which Seller believes to be reliable and correct but accuracy and completeness of such tests and the results thereof are not guaranteed and are not to be construed as a warranty, either express or implied. It is expressly understood by Buyer that all such recommendations, statements and technical data are provided without charge to Buyer and are given by Seller and accepted by Buyer on the basis that Buyer shall perform its own evaluation and testing to determine the suitability and applicability of such products. Seller assumes no obligation or liability for the advice given or the results obtained, all such advice being given and accepted at Buyer's sole risk.

9. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT SHALL SELLER BE LIABLE HEREUNDER OR OTHERWISE FOR ANY EXEMPLARY, PUNITIVE, REMOTE, SPECULATIVE, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES OR LOSS OF PROFITS, AND NO CLAIM SHALL BE MADE OR AWARDED AGAINST SELLER, FOR ANY SUCH DAMAGES OR LOSS OF PROFITS. Seller's sole liability and Buyer's exclusive remedy for any cause of action arising out of this Agreement, including the products or services provided hereunder, whether in contract, in tort, under warranty or otherwise, is expressly limited to, at Seller's option, replacement of the nonconforming products at the EXW point stated herein (freight for Buyer's account unless otherwise agreed to in writing) or payment not to exceed the purchase price of the products or services upon which such claim is based. Seller shall be given, and any claim shall be subject to Seller being provided, a reasonable opportunity to investigate the products subject to any claim. Buyer shall not make any representation or warranty with respect to the products to any person or entity without the prior written consent of Seller.

10. Except as provided in Paragraph 12 and 13, failure of Buyer to give notice of claim within ten (10) days from the date of delivery, shall constitute unqualified acceptance of such products and a waiver by the Buyer of all claims in respect thereof. Products shall not be returned to Seller without Seller's written permission. No claims shall be allowable after products have been processed in any manner.
11. Buyer acknowledges receipt of documentation detailing the performance properties, method of application (including important safety and health precautions), and instructions regarding the use of and for the products covered by Buyer's order ("Technical Documentation"). Buyer has been provided with and hereby acknowledges receipt of either (a) a copy of such Technical Documentation or (b) evaluation samples of the product and, unless the Seller is notified immediately in writing by Buyer to the contrary, Buyer will be deemed to have read and understood the contents of such Technical Documentation or, if evaluation samples were delivered, Buyer will be deemed to have tested such samples and to have understood the application and performance properties of the product including the said safety and health precautions necessary and relative thereto. Before using any product from the Seller, the Buyer shall determine the suitability of the product for its intended use and the Buyer assumes all risk and liability whatsoever in connection therewith.
12. All products must be inspected by Buyer upon receipt, and all claims for shortages must be made to Seller in writing within 5 days after the receipt of the products. NO CLAIMS OF SHORTAGE MAY BE MADE AGAINST SELLER AFTER THE EXPIRATION OF SUCH 5 DAY PERIOD. All products are shipped from our facility in good condition and packaged securely. Any shipment which arrives with visible signs of damage or missing packaging should be refused or thoroughly inspected with damage noted on the carrier's delivery ticket. Any claims for products damaged (visible or concealed) must be made by the Buyer to the delivering carrier in writing within 14 days after receipt of the merchandise.

Notwithstanding anything to the contrary herein, Buyer shall make an examination both as to quantity and quality IMMEDIATELY UPON RECEIPT OF PRODUCTS SHIPPED IN A FROZEN CONDITION. Under no circumstances shall examination be delayed more than twenty-four (24) hours after receipt and then only when the storage during this period is in compliance with the Seller's recommendations contained in the Technical Documentation for each product. Failure to perform the quality inspection and give notice to the Seller of any deficiency within the stated period constitutes a waiver by the Buyer of all claims with respect thereto.

13. When due, timely, and proper quality examination is performed by the Buyer, within the time and manner as provided for in Paragraph 10, on products supplied as in conformance the agreed-upon specification and the materials are determined to be not in conformance with such specification, a sample of the rejected material must be submitted to the Seller for testing before a claim for non-conformance with such specification may be made by Buyer. Seller must receive written notice from Buyer not later than ten (10) days following Buyer's receipt of such products and the failure to do so shall be deemed a waiver by Buyer of all claims with respect thereto. Notwithstanding the foregoing or under Paragraph 10 hereof, where testing to a specification requires in excess of ten (10) days, the notification period requirement is extended to allow Buyer's written notice to arrive within ten (10) days following the end of the testing period.
14. Buyer warrants that there is no U.S. patent covering products hereunder made especially for Buyer or that Buyer has the right to have them made. Seller shall not be liable to Buyer if sued for any U.S. patent infringement by any products made especially for Buyer hereunder, but if Seller is so sued, then Buyer will defend Seller and pay any awards against Seller provided Seller gives Buyer prompt written notice and permits Buyer to defend. Buyer assumes the responsibility for uses of any design, trademark, trade name, or part thereof, appearing on the products at Buyer's request.
15. All of the intellectual property related to the products manufactured by Seller and sold to Buyer under this Agreement is the sole and exclusive property of Seller. This Agreement is not a sale of any intellectual property related to the products and Buyer has no title to, or ownership in, such intellectual property. Buyer shall not analyze or otherwise examine any of Seller's products for the purpose of reverse engineering the formulations for such products. Buyer shall not repackage the products or remove any trademarks or copyright notices. Buyer shall not use or seek to register any trademark which is identical to or confusingly similar to any trademark which Seller owns or claims rights in anywhere in the world. Buyer shall promptly and fully notify Seller if Buyer has knowledge of any actual or suspected infringement of any of Seller's intellectual property rights or any claim by any third party that the products infringe on the rights of any person.

16. Buyer shall indemnify, defend and hold Seller harmless from and against any and all claims, demands, liabilities, suits, actions, proceedings, damages, costs and expenses (including, but not limited to, attorney's fees), incident to or arising out of or in connection with or relating to Buyer's negligent or willful acts or Buyer's breach of this Agreement. Seller may participate in any such defense to such extent as it, in its sole discretion, may determine.
17. Export Controls. In addition to all other requirements in this Agreement, each party agrees to comply with all export controls, embargoes, sanctions and similar laws, regulations, and requirements ("Export Controls") applicable to the products, services, samples, and/or technical information sold or otherwise transferred under this Agreement. Upon reasonable request, each party shall provide the other party with all information and documentation deemed necessary by the requesting party to comply with all Export Controls as they relate to this Agreement. Any suspected or actual violations of any Export Controls shall be reported to the disclosing party to the extent legally permitted. The obligations under this section survive termination of this Agreement.
18. This Agreement shall be governed and construed in accordance with the substantive laws of the Commonwealth of Pennsylvania, other than the conflict of law provisions and principles thereof. The United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980 and any successor thereto) is expressly excluded. Any litigation with respect to this Agreement shall be commenced only in the state courts or federal courts located in Pittsburgh, Pennsylvania and each party hereby submits to the jurisdiction of such courts.
19. This Agreement constitutes the entire agreement for the sale of the products.

If any of these Terms and Conditions or the application of them to any person or circumstance shall be held invalid or unenforceable, the remainder of these Terms and Conditions or the application of them to such person or circumstances shall not be affected thereby and shall be valid and be enforceable to the fullest extent permitted by law.

These Terms and Conditions may be amended by Seller, at its option, which amendment shall become effective upon publication of such amended Terms and Conditions.

The failure of a party in any one or more instances to insist on performance of any of the provisions hereof, or any part thereof, shall not be construed to be a waiver of such provision, or any part thereof in the future.

This Agreement, its performance, any interest herein or in any monies due or to become due herein, may not be assigned or subcontracted by Buyer without the prior written consent of Seller.